



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v Canada Employment Insurance Commission*, 2019 SST 952

Tribunal File Number: GE-19-1762

BETWEEN:

B. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: June 13, 2019

DATE OF DECISION: July 25, 2019

DECISION

[1] On the issue of voluntarily leaving her employment without just cause, the appeal is allowed. The result is that the Appellant qualifies for benefits because she did prove that she had just cause for choosing to leave her employment. On the issues of penalty and violation, the appeal is dismissed. These reasons explain why.

OVERVIEW

[2] The Appellant was employed until August 2, 2016 at which time she left her employment for another job that she had been offered prior to leaving. The Respondent determined that the Appellant chose to leave her employment without just cause and disqualified her from receiving benefits. The Respondent also notified the Appellant that a penalty in the form of a warning letter was imposed because she made a misrepresentation by knowingly providing false or misleading information. The Respondent further notified the Appellant that a violation was issued. The Respondent upheld these decisions upon reconsideration. The Appellant appealed the decision to the Tribunal.

ISSUES

[3] I have to decide

- a) if the Respondent proved that the Appellant chose to leave her employment;
- b) and if so, whether the Appellant proved that she had just cause for choosing to leave.
- c) should a penalty be imposed on the Appellant?
- d) should a violation be assessed on the Appellant?

ANALYSIS

[4] Employment insurance pays benefits to individuals involuntarily separated from employment, and are without work.¹ The Commission disqualifies claimants from receiving

¹ *Canadian Pacific Ltd. v. Attorney General of Canada*, [1986] 1 S.C.R. 678 explains this principle.

benefits if they are unable to show they had just cause for choosing to leave their employment.² In this appeal, the Appellant says she had just cause to leave her employment to accept a job that had been offered prior to leaving.

Did the Respondent prove that the Appellant chose to leave her employment?

[5] The Respondent has to prove that the Appellant could have stayed in her job but chose to leave.³ The Appellant did not dispute that she chose to leave her employment. I therefore find that the Appellant made the choice to leave her employment.

Did the Appellant prove that she had just cause for choosing to leave her employment?

[6] Having found that the Appellant chose to leave her employment, I have to decide if she proved that she had just cause for choosing to leave.

[7] The *Employment Insurance Act* (the Act) lists circumstances that I have to consider when assessing if the Appellant has proven just cause for leaving their employment; but I am not limited to considering only those listed circumstances. What the Appellant has to prove is that all of their circumstances, whether listed or not, show it is more probable than not that they had had no reasonable alternative to leaving their employment.⁴

[8] The Appellant provided that she left her employment for another job with X.

[9] The Appellant stated that she was accountable for contacting the employer to see when she would be working. She was constantly being called “stupid” and was yelled at on more than one occasion by the owner. She was threatened to be fired numerous times and she found it to be mentally exhausting.⁵

² *Employment Insurance Act*, subsection 30(1) sets out this principle.

³ *Canada (Attorney General) v. Peace*, 2004 FCA 56 explains that if a claimant chooses to leave their employment when they could have stayed, they have voluntarily left their employment within the meaning of sections 29 and 30 of the *Employment Insurance Act*. *Green v. Canada (Attorney General)*, 2012 FCA 313 explains that the Commission must prove that the claimant voluntarily left their employment.

⁴ Paragraph 29(c) of the *Employment Insurance Act* lists the circumstances. *Canada (Attorney General) v. White*, 2011 FCA 190 interprets paragraph 29(c) to require the claimants to prove their just cause. *Canada (Attorney General) v. Lessard*, 2002 FCA 469 discusses the requirement to consider all circumstances.

⁵ (GD3A-28 to GD3A-30)

[10] The Respondent provided that the Appellant did not have just cause for leaving her employment because she failed to exhaust all reasonable alternatives prior to leaving and she did not have reasonable assurance of another employment in the immediate future. Considering all of the evidence, reasonable alternatives to leaving would have been upon her return to the province, call the employer for her next shift for longer than a one week period and perhaps using that time to discuss her work schedule with her employer rather than leave a job without having secured any assurance of immediate employment. Consequently, the Appellant failed to prove that she left her employment with just cause within the meaning of the Act.

[11] At the hearing, the Appellant explained that the comments, such “stupid Indian” were not made directly to her but were made in her presence and referred to another employee. At the end of July, she contacted her previous employer in X and secured a job as a truck driver. She went there mid August but the truck had mechanical problems and she was not able to start work immediately. She started work the first week in September.

[12] I have carefully considered the submissions before me. I accept and assign more weight to the direct evidence of the Appellant. I find that the Appellant did show just cause when she left her employment. I accept the Appellant’s submission that she had reasonable assurance of another employment in the immediate future.

Should a penalty be imposed on the Appellant?

[13] Penalties may be imposed for false or misleading statements made "knowingly" (*Employment Insurance Act* (the Act), section 38). “Knowingly” is determined on the balance of probabilities based on the circumstances of each case or the evidence of each case.⁶

[14] A penalty applies when a claimant knowingly makes a false or misleading statement. There is no requirement to show that there was a mental element, such as the intention to deceive, when concluding that a false statement was knowingly made.

[15] The onus of proof is on the Respondent to show that the Appellant knowingly made false or misleading statements or representations.

⁶ (*Gates A-600-94*)

[16] The Respondent submitted evidence of the electronic reporting system with the questions asked and the answers given by the Appellant, proving that the Appellant knowingly made false or misleading statements.

[17] The Respondent met the onus because it proved that the Appellant made false statements when he completed her reports for the periods from July 12, 2016, August 6, 2016 and from September 18, 2016 to October 2, 2016. The Appellant indicated that she had worked and reported some of her earnings and she reported that she did not quit a job when in fact she had quit a job.⁷

[18] The burden of proof now shifts to the Appellant to prove the statements were not made knowingly and to provide a reasonable explanation for the incorrect information.

[19] The Appellant did not make any submissions on this issue.

[20] On the balance of probabilities the Appellant knew that she was not reporting correctly. I find that the electronic reports prove the Appellant knowingly made false and misleading statements when she reported that she did not quit a job when in fact she had quit a job; therefore, a penalty must be imposed.

Did the Respondent exercise its discretion properly in assessing the penalty amount?

[21] I must determine whether the Respondent exercised its discretion in a judicial manner when it determined the amount of the penalty.

[22] The amount of a penalty is a discretionary decision within the exclusive authority of the Respondent. There is no authority to interfere with discretionary decisions of the Respondent unless it can be shown that the Respondent exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.

[23] The Respondent submitted because it considered all pertinent circumstances in assessing the penalty amount, it rendered its decision in a judicial manner.

⁷ (GD3B-41)

[24] I agree with the Respondent and find that it rendered its decision in a judicial manner when it imposed a penalty on the Appellant in the form of a warning letter.

Should a violation be assessed on the Appellant?

[25] The Federal Court of Appeal confirmed that the purpose of section 7.1 of the Act is “to deter abuse of the employment insurance scheme by imposing an additional sanction on claimants who attempt to defraud the system”. The Court re-affirmed that the power to issue a Notice of Violation as provided under subsection 7.1(4) of the Act is a discretionary power that belongs to the Respondent. However, the Tribunal has the jurisdiction to determine whether the Respondent has exercised its discretion in a judicial manner when issuing the Notice of Violation.⁸

Did the Respondent exercise its discretion properly in assessing the subsequent violation?

[26] I find that the Respondent exercised its discretion in a judicial manner when issuing the Notice of Violation.

[27] I accept the Respondent’s submissions on the issue of violation. The Respondent considered the overall impact to the Appellant of issuing a Notice of Violation, including mitigating circumstances, prior offences and the impact on the ability of the Appellant to qualify on future claims. It is determined that a violation is applicable in this case. The Tribunal notes that the Appellant did not make any submissions on the issue of violation.

⁸ (*Gill v. Canada (AG)*, 2010 FCA 182)

CONCLUSION

[28] On the issue of voluntarily leaving her employment without just cause, the appeal is allowed.

[29] On the issues of penalty and violation, the appeal is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section

HEARD ON:	June 13, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. C., Appellant